

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
Before the Board of Patent Appeals and Interferences**

In re Patent Application of

Conf. No.: 9938

BRISCOE, et al.

Atty. Ref.: LSN -36-2011

Serial No. 10/593,442

TC/A.U.: 2463

Filed: September 19, 2006

Examiner: Omar J. Ghowrwal

For: TREATMENT OF DATA IN NETWORKS

\* \* \* \* \*

December 22, 2010

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**REPLY BRIEF**

In response to the Examiner's Answer dated October 27, 2010, Applicant now submits the following Reply Brief pursuant to 37 C.F.R. § 41.41. A Request for Oral Hearing and appropriate fees are submitted concurrently herewith.

**REMARKS/REPLY-ARGUMENT**

This is in response to the Examiner's Answer dated October 27, 2010. The arguments set forth in Applicant's Appeal Brief are incorporated herein by reference, and Applicant will not repeat the same herein. The following arguments are presented in response to the new arguments presented in the Examiner's Answer (e.g., see the "Response to Arguments" section on pages 10-19 of the Examiner's Answer) and also to further clarify Applicant's previous positions.

The Examiner is thanked for providing the "Response to Arguments" section in the Examiner's Answer. This section is helpful in the sense that it reveals that there still is some lingering confusion regarding that which is called for in the claims and that which is expressly taught by Cain (i.e., the reference primarily relied on in the §§ 102 and 103 rejections). As clearly set forth in Applicant's Appeal Brief, Cain does not identically disclose or inherently require, for example, "means for receiving path characterization information from an upstream node, and for deriving therefrom information indicative of a characteristic of a portion of the path between the intermediate node and the receiver node," as recited in claim 1. The anticipation rejection of claim 1 is fatally flawed for at least this reason.

The Examiner's Answer explains that Cain's "RREQQ" route requests are being mapped to the claimed "path characterization information." But those skilled in the art recognize that there is a clear distinction between (i) a route request (which may be

carried by a message), and (ii) information (which of course also may be carried by a message).

In attacking the independent claims, for example, the paragraph bridging pages 12-13 of the Examiner's Answer states that "The RREQQ messages the Examiner has been referring to in the rejection and in this Examiner's Answer are those that occur after the source node receives the error notification and then transmits the RREQQ messages." The Examiner's Answer then goes on to argue that these RREQQ route requests are "dependent on information that is fed back, because the QoS error message is what causes the source node to transmit the RREQQ messages." Although not made explicit, it appears that the Examiner's Answer is referring to paragraph 35 of Cain, which explains the most about what happens after a QoS error notification is generated. It is possible (but not clarified in Cain) that the transmission of subsequent RREQQ route requests might perhaps be triggered by the receipt at the source node of QoS error notifications. However, there is no indication in this paragraph or anywhere else in Cain that an RREQQ route request transmitted by the source node after receipt of such a QoS error notification would be different in any way to an RREQQ route request transmitted by the source node before or in the absence of receipt of a QoS error notification. Cain at paragraph 35 merely states that:

"If the node cannot continue to support the request RREQQ, then the node generates a QoS error notification RERRQ to the source node 1 (block 120). Here, the source node 1 may maintain the selected route, upon receiving the QoS error notification RERRQ, while again transmitting a quality-of-service (QoS) route request RREQQ to discover a new routing path to the destination node 4 based upon the QoS parameter (block 102). The source node 1 may also

switch to the standby route upon receiving the QoS error notification RERRQ (block 124)" (emphases added).

The second "means" recitation in claim 1 is "**means for receiving path characterization information . . . and for deriving** therefrom information . . .," with there being a specifically-defined relationship between the information received and the information derived. According to this definition, the information must be information indicative of a characteristic of a portion of the path between the intermediate node and the receiver node," and it must be information derived from the path characterization information that has been received from the upstream node. The "information derived" must therefore be dependent in some way on the "path characterization information" received. Differences in the received "path characterization information" must therefore be capable of resulting in differences in the "information derived" -- otherwise the "output" information cannot reasonably be said to be "derived" from the "input" information.

By contrast, with Cain, the receipt of QoS error notifications may be followed by the transmission of RREQQ route requests. But as explained above, there is no express teaching or inherent requirement (or even a naked suggestion) in Cain that any information carried by the RREQQ route requests in any way allows any "information indicative of a characteristic of a portion of the path between the intermediate node and the receiver node" to be derived therefrom, precisely because the RREQQ route requests are "request messages" rather than messages that carry any information that would allow

“information indicative of a characteristic of a portion of the path between the intermediate node and the receiver node” to be derived therefrom.

In addition to this fundamental misunderstanding, the Examiner’s Answer also misrepresents a number of Applicant’s arguments. Applicant therefore has attempted below to clarify the points being made -- and to demonstrate further lingering confusion associated with the Final Rejection that possibly has played a part in the continued erroneous rejection of the claims.

With respect to the comments in the second paragraph of page 12 of the Examiner’s Answer, the Examiner appears to be asserting that the arguments included on the second-half of page 18 of Applicant’s Appeal Brief pertain to features not recited in the independent claims. This is incorrect. Applicant is indeed well aware that the quoted phrase is not in the independent claims. The reason reference was made to them is evident from the sentence immediately after, in which Applicant explains that because Cain’s RREQQ route requests only provide information on the required/requested QoS (rather than actual QoS metrics of a downstream path (“3-5-4” for example) fed-back to the source node 1), Cain cannot be said to provide any “means . . . for deriving therefrom [i.e., from path characterization information received from an upstream node] information indicative of a characteristic of a portion of the path between the intermediate node and the receiver node.” The conclusion thus relates exactly to words that are recited in the independent claims and follows directly from the words on which the Examiner bases this misplaced objection.

In the very next paragraph, the Examiner's Answer continues the misplaced objection under the guise of attempting to explain “[w]hat is actually claimed. . . .” In so doing, the Examiner's Answer reproduces a phrase from the preamble of claim 1. Although the Examiner's Answer faithfully reproduces this language from claim 1, it is wholly inapposite to the point that Applicant had been making in the Appeal Brief (and indeed has further clarified herein). In fact, the relevant claim language is described in the preceding paragraph and is discussed at length herein -- i.e., the “means for receiving path characterization information . . . and for deriving therefrom information. . . .” The Examiner is not free to simply ignore or otherwise misdirect the claim analysis away from some of the specifically enumerated claim features -- particularly where, as here, the language being ignored or misapprehended clearly recites features that are not present in the cited references.

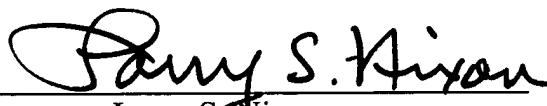
In sum, when the claim language and Cain are each fully and properly read, it becomes clear that Cain does not identically disclose (or inherently require) each and every feature of claim 1 (or the similar features of claim 8). The anticipation rejection of claims 1 and 8 should not be sustained, given that Cain fails to disclose the identical invention of claims 1 and 8 in as much detail as is called for in those claims. The rejections of the remaining claims also are flawed because they depend on a misunderstanding of the claim language and the teachings of Cain.

The application is in clear condition for allowance, and early reversal of the Final Rejection and passage of the subject application to issue thus are earnestly solicited.

BRISCOE, et al.  
Serial No. 10/593,442  
December 22, 2010

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

By: 

Larry S. Nixon  
Reg. No. 25,640

LSN:jr  
901 North Glebe Road, 11th Floor  
Arlington, VA 22203-1808  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100